

THE UTAH INDIGENT DEFENSE COMMISSION

Law Enforcement & Criminal Justice Interim Committee
-August 2017-



Utah Indigent Defense
Commission

WHAT IS THE UTAH INDIGENT DEFENSE COMMISSION?

Created in 2016, to “assist the state in meeting the state’s obligations for the provision of indigent defense services, consistent with the United States Constitution, the Utah Constitution, and the Utah Code.”



...what are the state’s obligations for indigent defense?

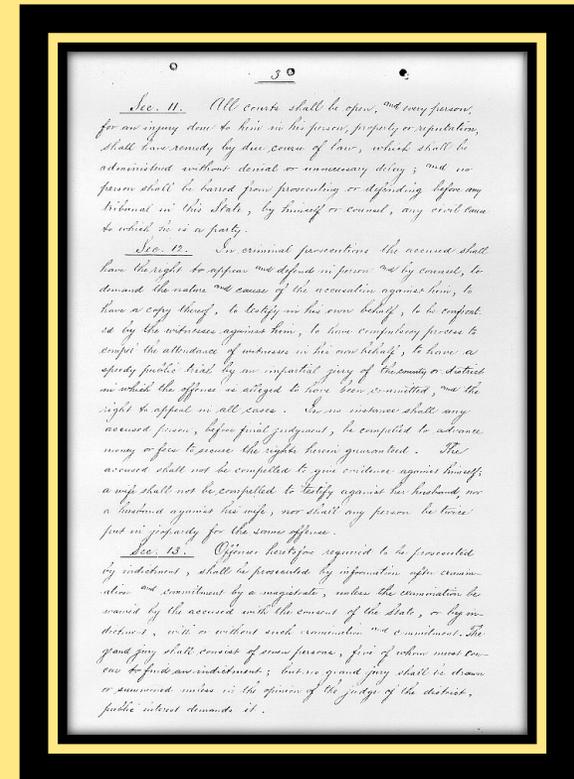
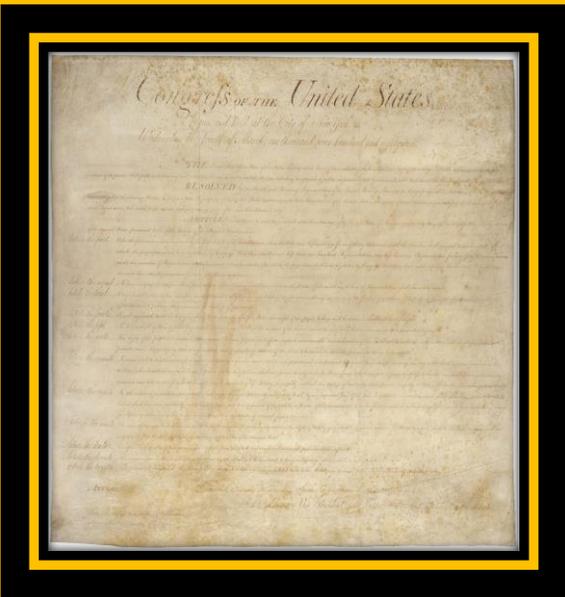
THE RIGHT TO COUNSEL IS CONSTITUTIONAL

United States Constitution Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury ... and to have the Assistance of Counsel for his defense.

Utah Constitution Article I, Section 12

In criminal prosecutions the accused shall have the right to appear and defend in person and by counsel.



YOU HAVE THE RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL IN UTAH

In Utah, the right to counsel extends to:

- *Indigent parties in all criminal proceedings (misdemeanor—direct appeal), Juvenile delinquency proceedings, Abuse, Neglect, & Dependency proceedings, & certain private termination of parental rights proceedings.*

Utah Code § 77-32-301 & § 78A-6-1111

Local govt's must provide indigent defense services.

- *Every county, city, & town shall provide for the legal defense of an indigent defendant in criminal cases in the courts of the state.* Utah Code § 77-32-301
- *The **cost** of appointed counsel for a party found to be indigent, including the cost of counsel and expense of the first appeal, **shall be paid by the county** in which the trial court proceedings are held.* Utah Code § 78A-6-1111

Effective Representation Required

- *When indigent defense service providers are court appointed, they "shall provide the legal defense services necessary for effective representation."*

Utah Code § 77-32-302

1963

Gideon v. Wainwright

6th & 14th Amendments require states to provide counsel to people accused of serious crimes, regardless of wealth.

1967

In RE Gault

14th Amendment requires states to provide counsel to juveniles in delinquency proceedings.

1972

Argersinger v. Hamlin

Right to counsel is governed by whether the offense carries the possibility of imprisonment/loss of liberty.

2002

Alabama v. Shelton

Right to counsel is determined by whether the underlying offense carries the possibility of incarceration, for offenses where a suspended jail sentence for probation is an option.

2008

Rothgery v. Gillespie County

Right to counsel attaches when “formal judicial proceedings have begun” & any critical stage thereafter must have counsel.

THE RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL

<p><i>Strickland v. Washington (1984)</i></p>	<ul style="list-style-type: none">• <i>The right to counsel = lawyer provided to represent an indigent person must be effective.</i>• <i>Asks: Were lawyer's actions reasonable in a case &, if unreasonable, did those actions prejudice the outcome of the case?</i>
<p><i>U.S. v. Cronin (1984)</i></p>	<ul style="list-style-type: none">• <i>Asks if certain factors prevented a fair trial. Actual or constructive denial of counsel.</i>• <i>Constructive denial = circumstances made it impossible for attorney to be effective: conflicts, insufficient time, experience, no resources, etc. (Prejudice presumed)</i>
<p><i>State v. Hales, 2007 UT 14</i></p>	<ul style="list-style-type: none">• Ineffective -- "when counsel's conduct so undermines the proper adversarial process that the trial cannot be relied on as having produced a just result."• Reversed for failure to investigate with right expert.
<p><i>State v. Lenkart, 2011 UT 27</i></p>	<ul style="list-style-type: none">• "[O]ne of criminal defense counsel's most fundamental obligations is to investigate the underlying facts of a case. This duty is not optional; it is indispensable."• Reversed for failing to adequately investigate & present exculpatory evidence.

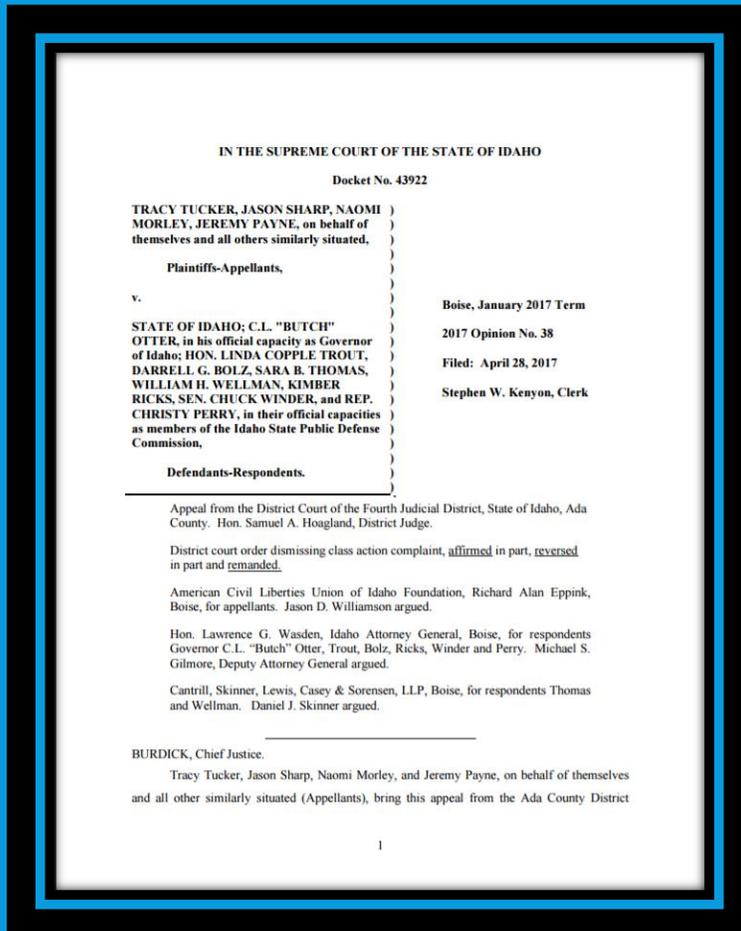
IDAHO SUPREME COURT: TUCKER V. IDAHO

Applying *U.S. v. Cronin*

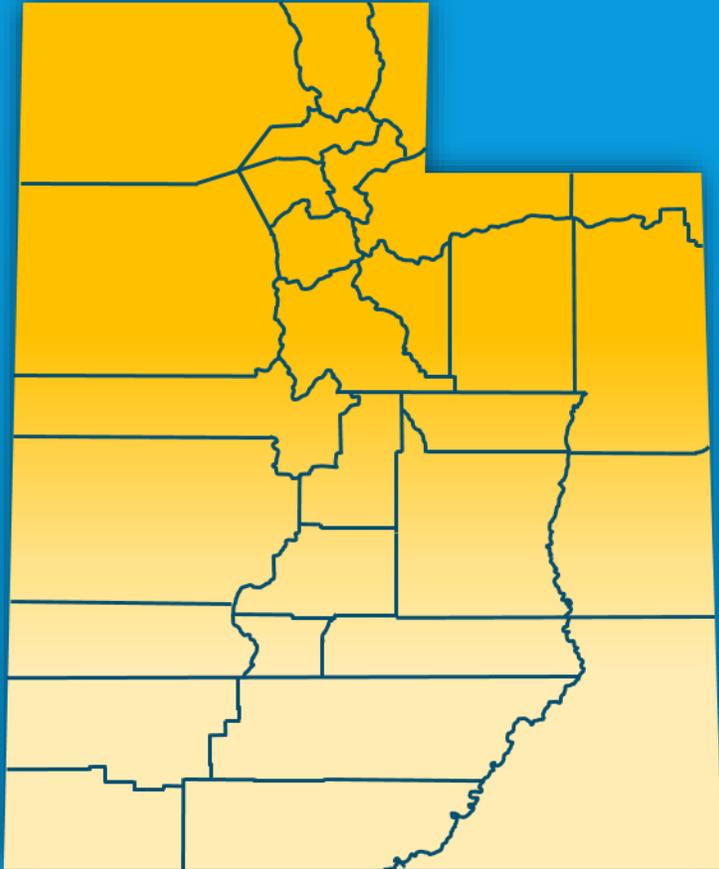
Sovereign immunity DOES NOT shield state from liability for unconstitutional indigent defense.

“While the provision of public defense has been delegated to Idaho’s forty-four counties under Idaho Code section 19-859, ‘the ultimate responsibility for fulfilling the . . . constitutional duty cannot be delegated.’”

State has the “ultimate responsibility to ensure the public defense system passes constitutional muster.”



PATCHWORK OF INDIGENT DEFENSE SYSTEMS IN UTAH



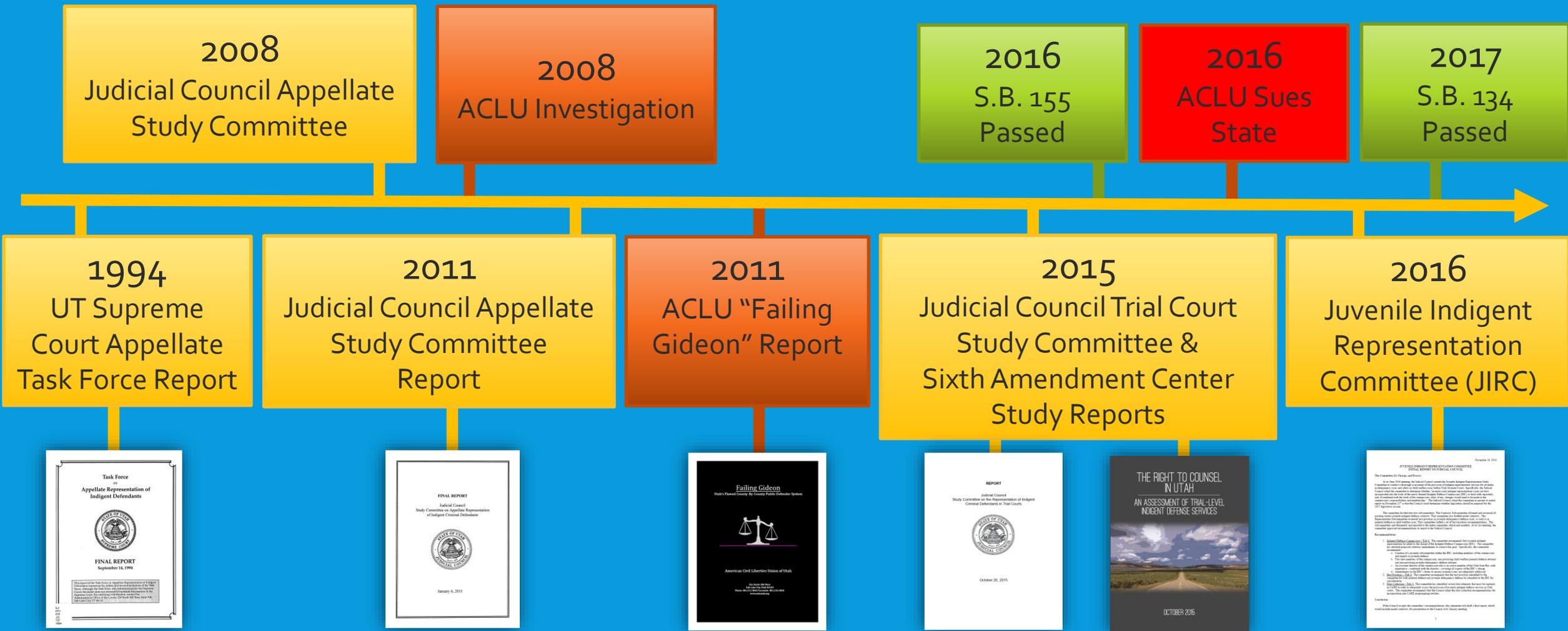
Nearly all of Utah's 29 counties & the 158 cities prosecuting criminal cases, separately provide for indigent defense representation in:

- 36 District Courts (39,637 criminal cases FY16)
- 125 Justice Courts (64,271 criminal cases FY16)
- ~45,00 Appointed Criminal Cases in FY16 (Fel-MC)

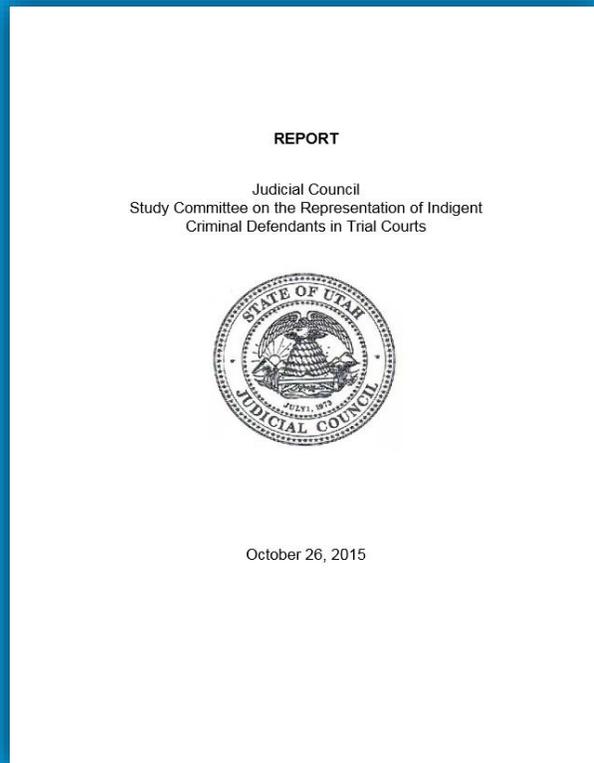
Providers:

- 2 institutional public defender offices
 - 1 county public defender/coordinator
 - Independent contractors
- = Inconsistent funding, quality, oversight, practices, etc.

UTAH STUDIES & LITIGATION INVOLVING INDIGENT DEFENSE



2015 Judicial Council Report on the Representation of Indigent Criminal Defendants in Trial Courts



This report recognizes that the **absence of State oversight** of the way in which the right to counsel is administered by counties and municipal governments means there is:

- No mechanism for **gathering needed comparative data** across jurisdictional boundaries,
- No statewide **mechanism for overseeing** how the right is actually provided by local governments, &
- No **statewide standards** that can be relied upon by counties and municipal governments to assure that the constitutional obligation to provide counsel is adequately met.

THE UTAH INDIGENT DEFENSE COMMISSION

- SCOPE OF WORK:

- Adult Criminal through appeal (2016)
- Juvenile Delinquency (2017)
- Abuse, Neglect, & Dependency Proceedings (2017)
- Parental Termination Cases (2017)

- IDC Duties:

- Collect Data
- Give Constitutional Guidance
- Encourage Regionalization
- Award Grants

... And more!

15 Commissioners
&
3 Staff
(expanding)

\$2.5 Million
One-Time
Grant Funds

\$560,000
Ongoing
Grant Funds

THE IDC'S STATUTORY DUTIES: COLLECT STATEWIDE DATA

- (1) The commission shall . . . identify and collect data necessary for the commission to:**
- (i) review compliance by indigent defense systems of minimum principles for effective representation;**
 - (ii) establish procedures for the collection and analysis of the data; and**
 - (iii) provide reports regarding the operation of the commission and the provision of indigent defense services by each indigent defense system;**

UT Code 77-32-804(1)(b)(i)-(iii).

DIRECTOR'S STATUTORY DUTIES: HIRE STAFF TO COLLECT STATEWIDE DATA

(1) The director shall hire staff as necessary to carry out the duties of the commission, **including . . .**

. . . (b) one individual with data collection and analysis skills to carry out the duties as outlined in (the preceding Subsection)

Utah Code § 77-32-803(3)(b)

Taylor Mosolf

Hired January 2017

J.D., Economics Degree, former performance auditor with the Utah State Auditor

SOURCES OF UTAH INDIGENT DEFENSE DATA

- AOC Case Data (CORIS & CARE)
- Local government contracts w/ attorneys
- Local government budgets
- Local government financial information
- Local Court Data
- Individual Attorney Records
- Surveys & Studies

SYSTEMS

DATA SOURCES

COLLECTED DATA

29
COUNTIES

158
CITIES
&
TOWNS

COURTS
DISTRICT
JUVENILE
JUSTICE

Office of the Utah State Auditor
(System Budgets)

- System Name
- Budget Amount
- Spending Type

UPFW "Transparency" Website
(System Accounting Info)

- System Name
- Attorney/Firm Name (Payee)
- Amount & No. of Payments
- Payment Description

Defense Provider Contracts

- Attorney Name
- System Name
- Type of Contract
- Payment Amount

Administrative Office of the Courts
(CORIS & CARE)

- Attorney Name & Bar Number
- System Name (Prosecuting Entity)
- Court Location
- Case Type
- Case Number/Event
- Attorney Appearance

Utah State Bar Directory

- Attorney Name & Bar Number
- Firms

Spending Data

- System Name
- Amount Spent
- Firm/Attorney
- Case Type

Attorney List

- Name
- Bar Number
- Practice Area
- Firm
- Contracts Held

Case Data

- Number
- Case Type
- Attorney Name
- System Name
- Court Name

WHAT WE CURRENTLY KNOW – FY16

Number of Systems

29 Counties
158 Cities and Towns (out of 246)

Number of Courts

36 District Courts
125 Justice Courts

Total Number of Cases Filed

103,908 (Class C Misdemeanors and up)
22,265 Felonies
81,643 Class A - C Misdemeanors

Total Number of Appointed Cases According to AOC Data

26,037 Cases Flagged as Appointed – **Actual number is much higher!**

AOC CORIS INDIGENT DEFENSE DATA

- FOCUS: AOC Case Data (**CORIS**)

Appointment "Flag": Court has appointed an attorney to that case.

Attorney Appearance: Individual attorney appeared on case on specific date or time.

The Ten Largest Systems By Case Volume

System Name	Criminal Cases Filed in FY16	Criminal Cases Flagged as Appointed	Criminal Cases No Flag But One or More Attorney Appearance
SALT LAKE COUNTY	16647	431	12785
SALT LAKE CITY	11941	6	6185
UTAH COUNTY	4630	2640	1106
WEST VALLEY CITY	4172	1524	1424
OGDEN CITY	3039	851	1293
WEBER COUNTY	2735	1940	593
WASHINGTON COUNTY	2583	1708	575
DAVIS COUNTY	2529	1520	695
PROVO CITY	2432	1393	376
WEST JORDAN CITY	2387	656	419

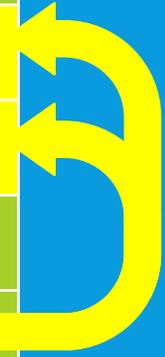
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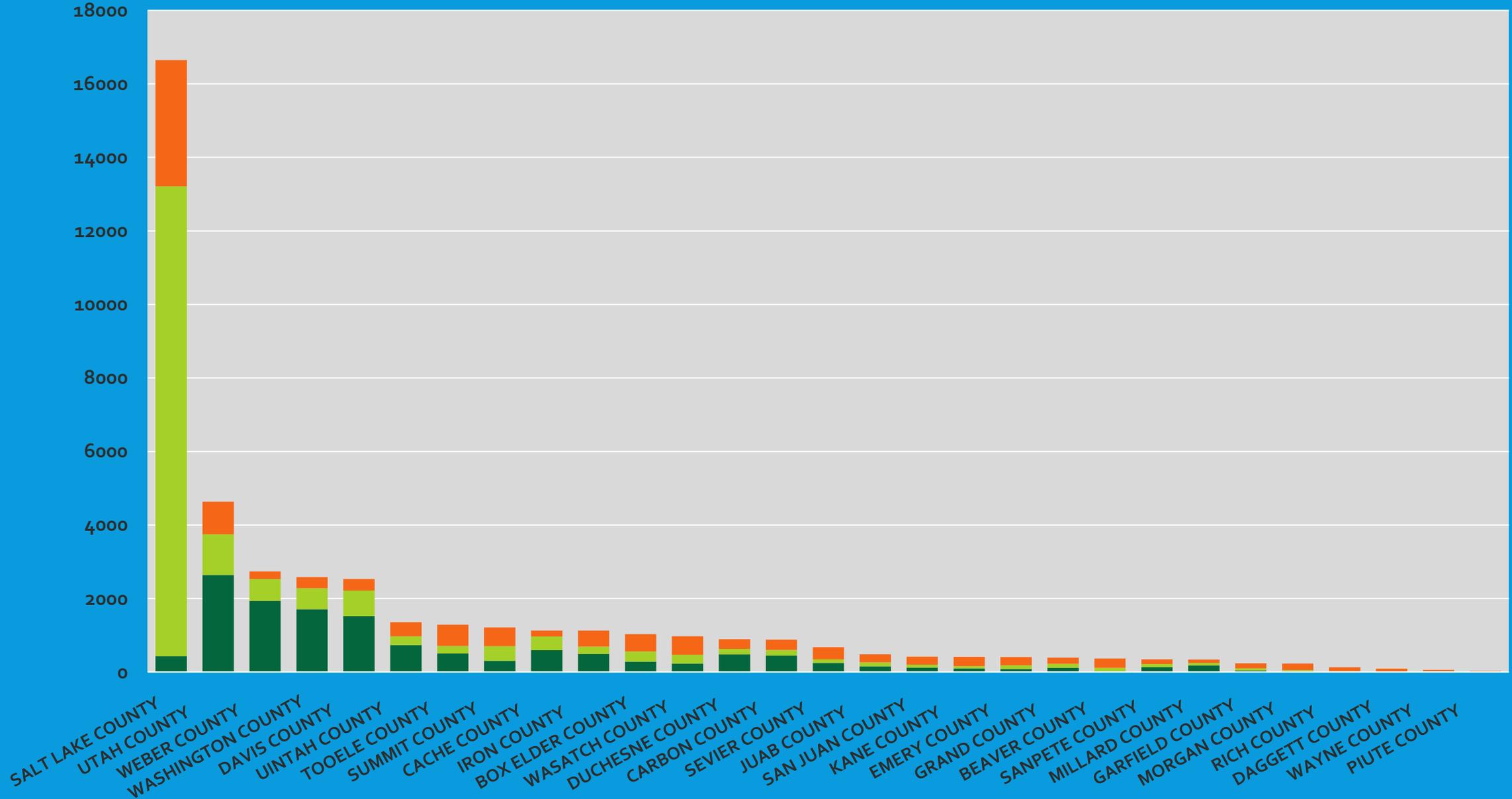
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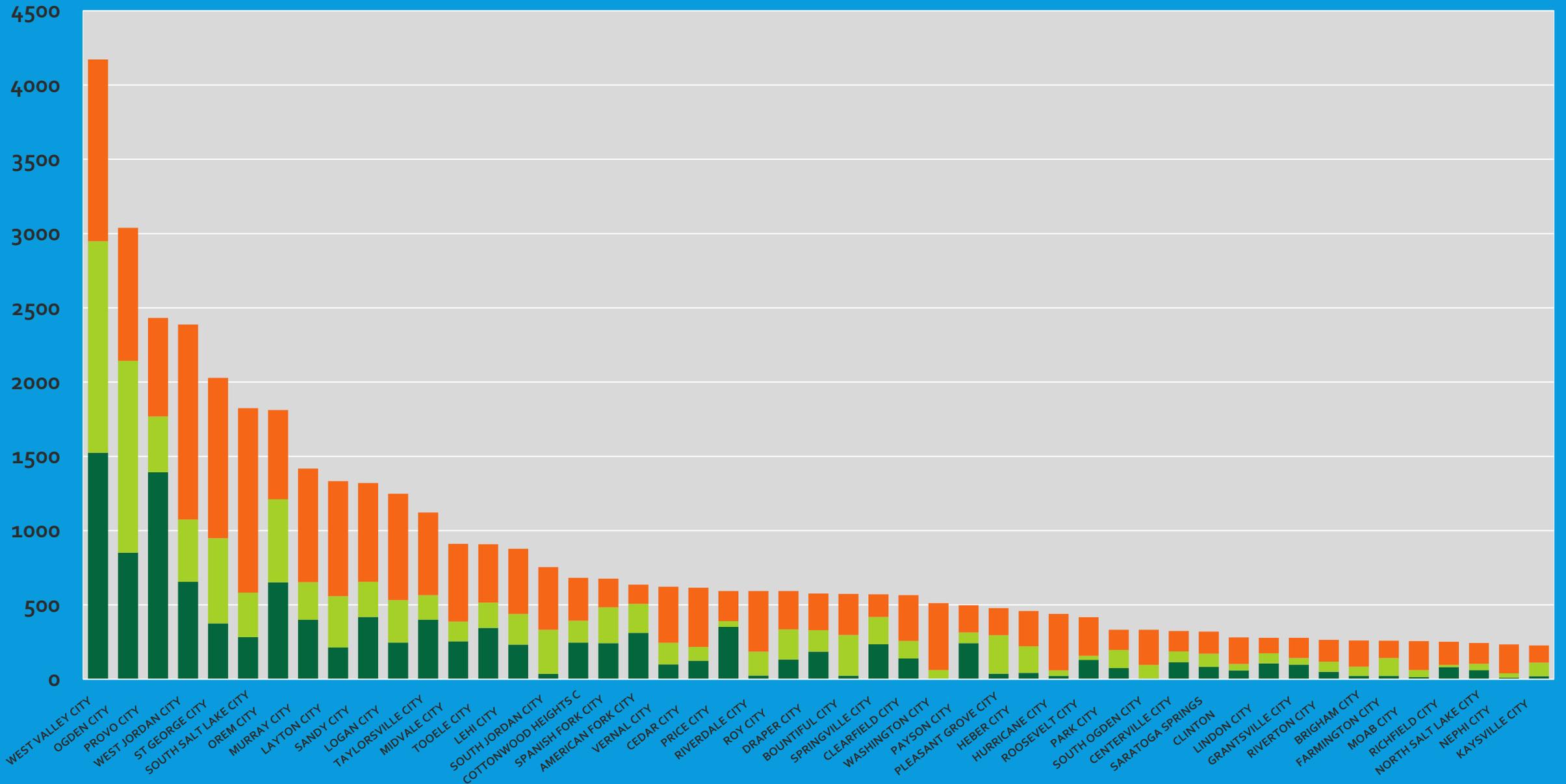
According to internal data collection, SLLDA had 12,000+ cases in FY16



Case Distribution By County

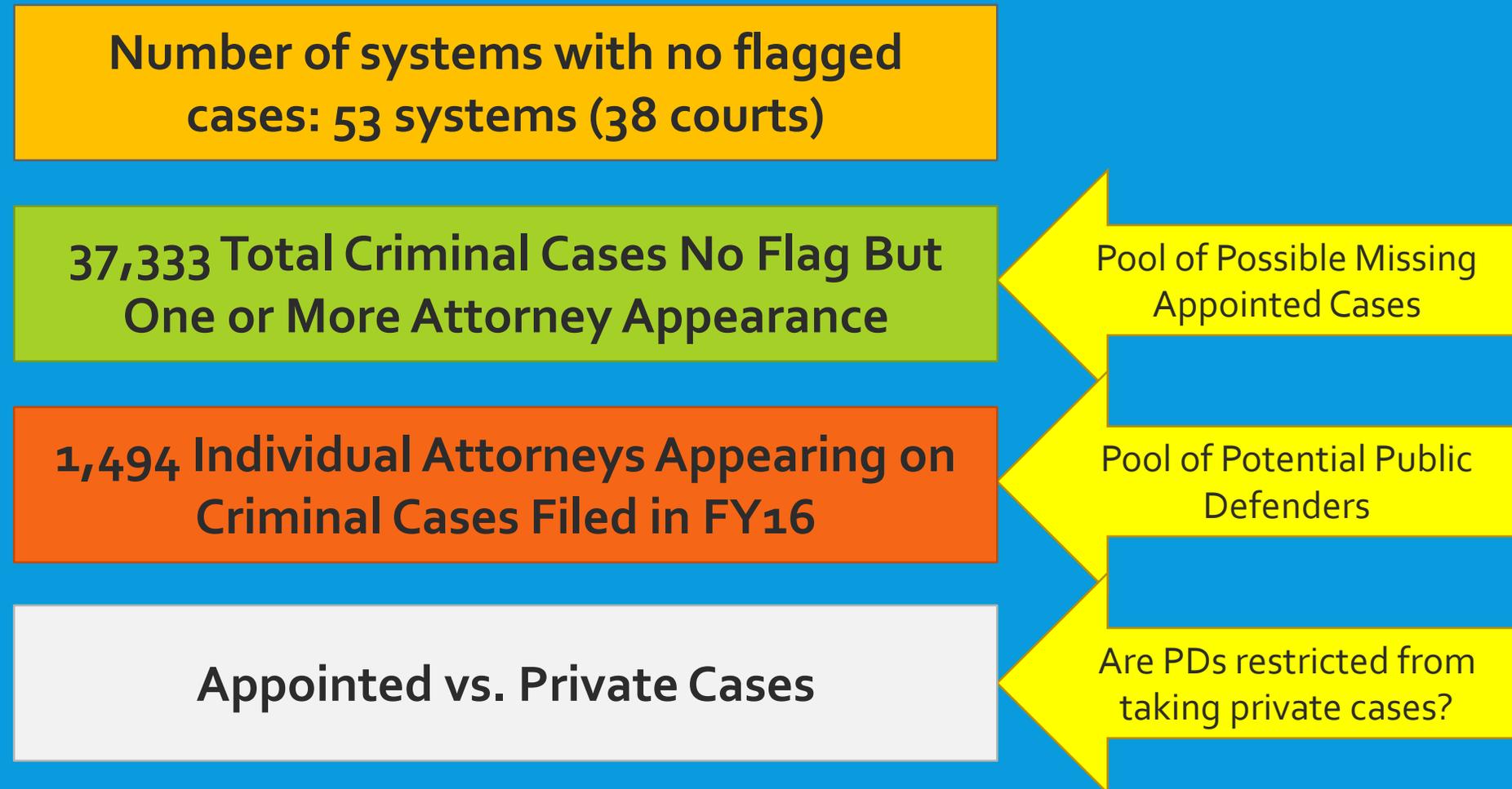


The 50 Largest City Systems Excluding SLC



SCALE OF DISCREPANCY

With no baseline it is extremely difficult to tell the difference between what is a “normal” rate of appointment and what might be a problem with the data



CHALLENGES

With so many possible variables, actors involved, and such large differences in scale between individual systems, there is so much we don't yet know.

- Are there appointment flagging data entry issues?
- Are there attorney appearance data entry issues?
- Are there actual procedural appointment issues?
- Are there other system specific reasons (type of cases, socioeconomic, location, etc.)?
- Or a combination of multiple factors...

SOLUTIONS

SHORT TERM

- Use other data sources:
 - Transparency Website
 - Individual Provider Contracts
 - State Bar Directory
 - ULCT Survey (only 25% have responded)
- Contact local court administrators and local providers

LONG TERM

- Use IDC grants to encourage regionalization and concentrate attorneys to facilitate data reporting
- Changes to CORIS data collection
- Court Clerk and Judge education
- Reporting requirements for attorneys & systems

IDC DATA WILL HELP FULFILL STATUTORY DUTIES

LONG TERM

- Appointment rates & total appointed cases in systems
- Individual system spending: on attorneys & case
 - *To determine if spending on representation is adequate*
- Determining caseloads of Public Defenders practicing in many systems
 - *To determine if workloads are appropriate & allow for effective representation*
- System compliance with Constitutional & IDC standards
 - *To fulfill auditing duty and grant monitoring*

THE IDC'S STATUTORY DUTIES: AWARD GRANTS

"The IDC shall establish procedures to allow indigent defense systems to apply for state funding and award grants from state appropriations."

Critical Needs Grants	Matching Grants	Other Grants
<p>System can show:</p> <ol style="list-style-type: none"> 1) Will incur expenses over adjusted annual spending to provide necessary effective assistance; <u>and</u> 2) Increasing local spending is an undue burden. <p style="text-align: right;">Discretionary Grant</p>	<p>System can show:</p> <ol style="list-style-type: none"> 1) Already increased spending above adjusted annual spending to improve constitutionality of indigent defense services. <p style="text-align: right;">Formula Grant Amount Prorated By County Class</p>	<p>System wants to:</p> <ol style="list-style-type: none"> 1) Establish and maintain an indigent defense data collection system; <u>or</u> 2) Provide for other defense resources. <p style="text-align: right;">Discretionary Grant</p>

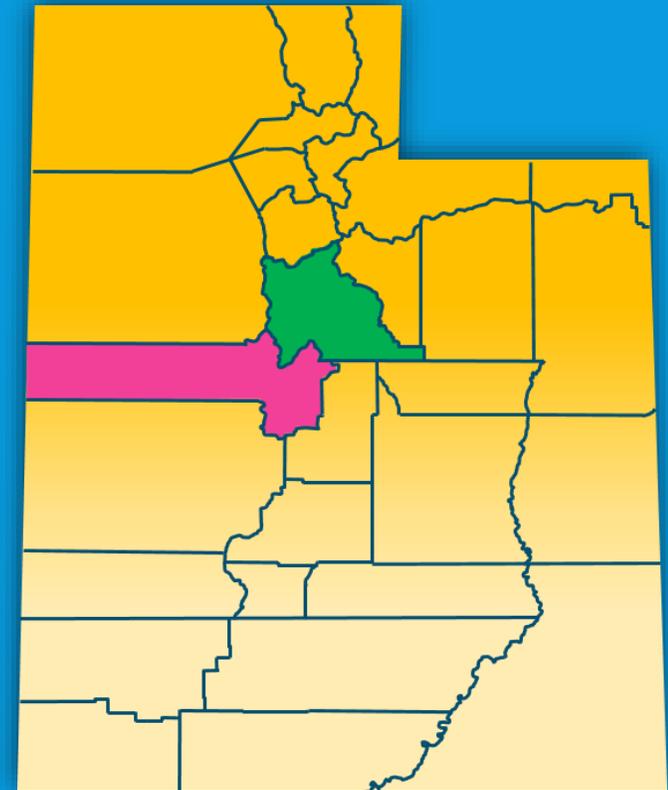
IDC GRANT TO JUAB COUNTY

Grant Achieved: Data reporting, regionalization, & constitutionality
Regionalizing indigent defense services by contracting w/
independent (501(c)3) UT County Public Defender Office to oversee
attorneys providing effective representation in Juab County Courts.

Juab Indigent Defense Budget (2017): \$140,200

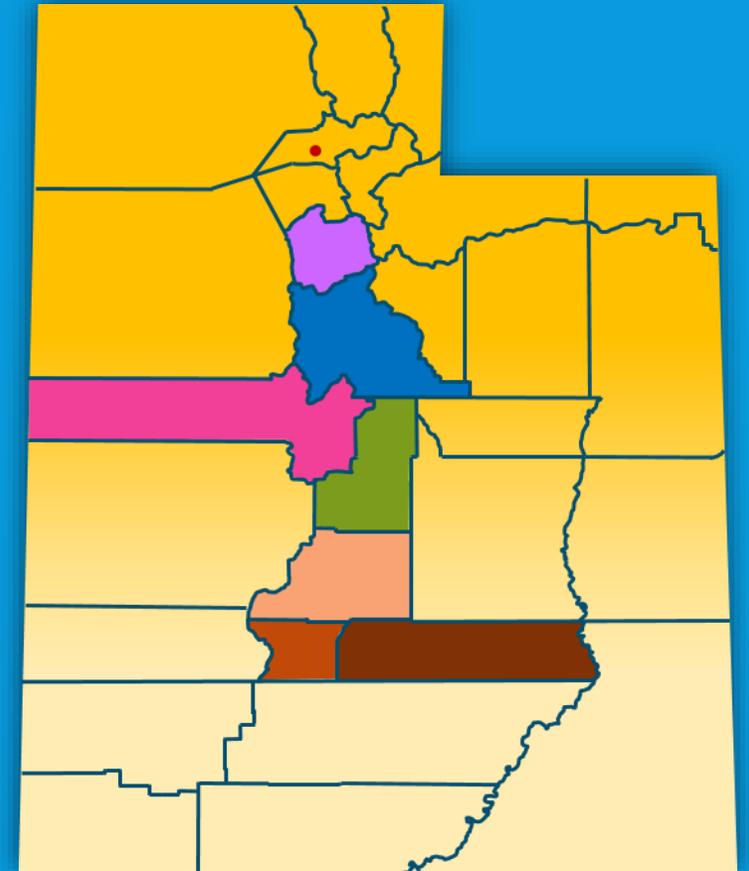
IDC Grant (2017): \$182,000 supplemental

- **Increased** number, quality, training, experience, specialization, & accountability of attorneys in Juab County Courts (\$152,000)
- **Increased Resources:** Investigators, experts, appeals (\$30,000)
- **Results:** system-wide reform



OTHER POTENTIAL GRANTS PROJECTS

- **Sanpete County** – Possibly contracting with Utah County Public Defenders Office
- **Utah County** – Help ensure quality of second largest indigent defense office in the state.
- **Ogden City** – Regional training plan for justice court contractors lead by former justice court judge.
- **Salt Lake County** – Case Management Software, Conflict Administration, Homeless
- **Richfield Regional Office** – Sevier, Wayne, & Piute





Utah Indigent Defense Commission

Contact the IDC:

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<https://justice.utah.gov/indigent-defense.html>